

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO - WESTERN DIVISION**

GERALD CASH, <i>et al.</i>	:	Case No. C-1-01-753
	:	
Plaintiffs,	:	(Honorable Sandra S. Beckwith)
	:	
v.	:	DEFENDANTS' MOTION TO DISMISS
	:	THE CLAIMS OF GERALD AND CLARA
HAMILTON COUNTY DEPT. OF ADULT	:	CASH PURSUANT TO CIV.R. 25
PROBATION, <i>et al.</i>	:	
	:	
Defendants	:	

The Defendants hereby move to dismiss all claims of Gerald Cash and Clara Cash under F.R.C.P. 25 for failing to substitute a proper party.

Respectfully submitted,

JOSEPH T. DETERS
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO

by: /s/ David T. Stevenson
David T. Stevenson Oh. Reg. 0030014
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
ddn: (513)946-3120; fax: (513) 946-3018
Dave.Stevenson@hcpros.org
Counsel for County Defendants

JULIE L. McNEIL
CITY SOLICITOR

/s/ Richard Ganulin
Richard Ganulin Oh. Reg. 0025642
Assistant City Solicitor
801 Plum Street, Suite 801
ddn: (513)352-3329; fax: (513)352-1515
Richard.Ganulin@cincinnati-oh.gov
Cincinnati, Ohio 45202
Counsel for the City of Cincinnati

MEMORANDUM

On November 5, 2003, a suggestion of death as to Gerald and Clara Cash was filed by plaintiffs in this action and served upon defendants. A copy of the notice is being filed as an exhibit to this motion. Federal Rule of Civil Procedure 25 provides in pertinent part:

Rule 25. Substitution of Parties

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

Over two and one-half years have passed since the suggestion of death was filed by plaintiffs. No motion has been tendered on behalf of Gerald Cash or Clara Cash to substitute their successors or representatives. Dismissal of the claims of Gerald Cash and Clara Cash is therefore appropriate. *Russell v. City of Milwaukee Employees' Retirement System Annuity and Pension Bd.*, 338 F.3d 662 (7th Cir. 2003).

Respectfully submitted,

/s/ David T. Stevenson

David T. Stevenson Oh. Reg. 0030014
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
ddn: (513)946-3120; fax: (513) 946-3018
Dave.Stevenson@hccpros.org
Counsel for County Defendants

/s/ Richard Ganulin

Richard Ganulin Oh. Reg. 0025642
Assistant City Solicitor
801 Plum Street, Suite 801
ddn: (513)352-3329; fax: (513)352-1515
Richard.Ganulin@cincinnati-oh.gov
Cincinnati, Ohio 45202
Counsel for the City of Cincinnati

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed on the 14th day of July through the electronic filing system of the United States District Court for the Southern District of Ohio, which will cause service to be made upon:

Stephen J. Felson, 0038432
Robert B. Newman, 0023484
Suite 1401
617 Vine Street
Cincinnati, Ohio 45202
Counsel For Plaintiffs

/s/ David T. Stevenson